



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Services Alliance Systems, Inc.

**File:** B-248001

**Date:** May 29, 1992

Lawrence W. Luecking for the protester.  
James A. Sparks, Esq., and Paul M. Fisher, Esq., Department  
of the Navy, for the agency.  
John M. Melody, Esq., Office of the General Counsel, GAO,  
participated in the preparation of the decision.

### DIGEST

Where bid does not include evidence of the authority of a  
surety's agent to sign the required bid bond on behalf of  
the surety, the bid is nonresponsive and must be rejected.

### DECISION

Services Alliance Systems, Inc. (SASI) protests the rejection of its low bid as nonresponsive under invitation for bids (IFB) No. N62766-92-B-2004, issued by the Department of the Navy for exterior painting of buildings at various locations in Guam. The Navy determined that the bid was nonresponsive because the required bid bond was not accompanied at bid opening by a power of attorney evidencing the authority of the attorney-in-fact to sign the bond on the surety's behalf.

We dismiss the protest.

The IFB required the submission of a bid guarantee in the proper form by bid opening, and stated that "[a]ny person signing in a representative capacity must furnish evidence of authority. . . ." SASI's bid included a bid bond signed by Sharlene Franco as attorney-in-fact for Amwest Surety Insurance Company, but it did not include a power of attorney or other evidence of Ms. Franco's authority to bind Amwest. The Navy rejected the bid as nonresponsive on this basis.

SASI argues that the agency's determination was improper because "matters relating to suretyship are matters of responsibility, not responsiveness," and that it therefore should have been given an opportunity to provide the power of attorney after bid opening. Alternatively, SASI maintains that the absence of the power of attorney should

have been waived as a minor informality, since the record now shows that Ms. Franco in fact had the requisite authority prior to bid opening.

A bid bond secures the surety's liability to the government, providing funds to cover the excess costs of awarding a contract to the next eligible bidder in the event the awardee fails to fulfill its obligations. See 14 Comp. Gen. 305, 308 (1934). Under the law of suretyship, no one incurs a liability to pay the debts or to perform the duties of another unless that person expressly agrees to be bound. Andersen Constr. Co.; Rapp Constructors, Inc., 63 Comp. Gen. 248 (1984), 84-1 CPD ¶ 279.

A required bid bond is a material condition of responsiveness with which there must be compliance at the time of bid opening; when a bidder submits a defective bond, the bid itself is rendered defective and must be rejected as nonresponsive. 38 Comp. Gen. 532 (1959); Minority Enters., Inc., B-216667, Jan. 18, 1985, 85-1 CPD ¶ 57. A bid bond's sufficiency depends upon whether the surety is clearly bound by its terms. Truesdale Constr. Co., Inc., B-213094, Nov. 18, 1983, 83-2 CPD ¶ 591. The determinative question as to the acceptability of a bid bond, therefore, is whether the bid documents establish that the bond is enforceable against the surety should the bidder fail to meet its obligations. A.W. and Assocs., Inc., 69 Comp. Gen. 737 (1990), 90-2 CPD ¶ 254.

Absent evidence, such as a power of attorney, that Ms. Franco was authorized to act on behalf of the surety, the bid documents did not establish that the bond would be enforceable against the surety, and the bond therefore was defective. Techno Eng'g & Constr., Ltd., B-243932, July 23, 1991, 91-2 CPD ¶ 87. As indicated above, a defective bid bond renders the bid nonresponsive--it is not a matter of responsibility as SASI maintains--and the protester's failure to include with its bid a copy of Ms. Franco's authority to sign bonds for Amwest therefore could not have been waived as a minor informality. Bermudez & Longo, S.E., B-246188, Oct. 30, 1991, 91-2 CPD ¶ 411. SASI's submission of evidence of Ms. Franco's authority after bid opening, even though that evidence may have been in existence at the time of bid opening, does not cure the bid's nonresponsiveness; a nonresponsive bid cannot be made responsive after bid opening. Techno Eng'g & Constr., Ltd., supra.

In its comments on the agency's report, SASI argues for the first time that under the law of California (where the bond was executed), the bond as submitted by SASI, without evidence of the attorney-in-fact's authority, was sufficient to bind the surety. Under our Bid Protest Regulations, protests must be filed no more than 10 working days after

the protest basis was or should have been known. 4 C.F.R. § 21.2(a)(2) (1992). Each protest ground must independently satisfy the timeliness requirements of our Regulations, which do not contemplate the piecemeal presentation or development of protest issues. RRRS Enterprises, Inc., B-241512; B-241512.2, Feb. 12, 1991, 91-1 CPD ¶ 152. SASI's argument concerning the legal sufficiency of its bid bond should have been raised within 10 working days after March 20, 1992, the date SASI received notice of the rejection of its bid. As SASI did not raise the argument until May 11, the date its comments were submitted, it is untimely and will not be considered.

The protest is dismissed.



David Ashen  
Acting Assistant General Counsel